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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,339	05/11/2001	Richard N. Fargo	60469-025; OT-4739	7381

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EXAMINER

TRAN, KHOI H

ART UNIT	PAPER NUMBER
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3651

DATE MAILED: 03/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/853,339

Applicant(s)

FARGO ET AL.

Examiner

Khoi H Tran

Art Unit

3651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 14 and 27-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 14, and 27-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


KHOI H. TRAN
PRIMARY EXAMINER

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 14 and 30 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter that was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification does not disclose the escalator machine being covered entirely (on all sides, not just on both sides) by the steel sheet modules.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 32 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. "other portions of the rise" lacks antecedent basis.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 14, and 27-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gschwendtner '6,374,981.

Gschwendtner '981 discloses an escalator support structure per claimed invention. The support structure comprises a top and bottom landing supports (Figures 1-3). The top and landing supports are connected via a rise (Figure 3). The rise includes at least one module of steel plate wall. Said wall comprises a top edge, a bottom edge, and two side edges (Figures 3 and/or 8). Said wall provides a generally planar exterior surface from said top edge to said bottom edge and between said side edges. However, Gschwendtner '981 is silent as to the specifics of the wall being continuous, unbroken, and the steel plate could be welded to other portions of the rise along the edges of said steel plate. Gschwendtner Figure 1 does show a continuous, unbroken coverage extends the entire one side of the escalator support structure.

In the Drawing Descriptions of column 2, Gschwendtner '981 indicated that the wall plate in Figure 8 has a solid plate mode of construction. In column 3, lines 44-46 Gschwendtner '981 indicated that screw connections could also be replaced by means of welds.

Gleaning from Gschwendtner '981 suggestive desires above, it would have been obvious for a person with ordinary skill in the art, at the time the invention was made, to have made Gschwendtner '981 wall module from a solid plate and welded said plate, along the edges thereof, onto portions of the rise because it facilitates another attachment means for a solid plate wall.

In regards to claim 27, Gschwendtner '981 rise comprises plurality of support sub-modules (Figure 2). The reversed N-shaped support sections are interpreted as support sub-modules.

In regards to claim 28, it is obvious that one edge of Gschwendtner '981 steel plate is attached to a first one of the support sub-modules and a second one of the side edges is attached to a second one of the support sub-modules so that the entire rise can be covered as shown in Figure 1.

In regards to claim 29, it is obvious that the first and second edges of the steel plate are welded to the first and second sub-module as indicated above. Providing welding attachment to replace bolt attachment is contemplated in Gschwendtner '981.

In regards to claim 30, Gschwendtner '981 wall covers the entire one side of the escalator drive machine (Figure 2).

In regards to claim 31, Gschwendtner '981 support sub-modules provide a rigid framework.

7. Claims 1, 14, 27-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kneipp 2,936,872 in view of Gschwendtner '6,374,981.

Kneipp '872 discloses an escalator support structure per claimed invention. The support structure comprises a top and bottom landing supports (Figure 1). The top and landing supports are connected via a rise (Figures 1 and 2). The rise includes at least one module, wall panel 10 or 11. Said wall panel 10 or 11 comprises a top edge, a bottom edge, and two side edges (Figure 2). Said wall panel 10 or 11 provides a continuous, unbroken and generally planar exterior surface from said top edge to said

bottom edge and between said side edges. However, Kneipp '872 is silent as to the specific of the wall panels being made from steel sheet.

Gschwendtner '981 discloses an escalator support structure. Gschwendtner '981 support structure comprises steel sheet wall that connects the top landing support to the bottom landing support. Gschwendtner '981 shows that making wall panel from steel sheet is commonly well known within the art.

It would have been obvious for a person with ordinary skill in the art, at the time the invention was made, to have made Kneipp '872 wall panels out of steel sheets because it facilitates commonly well known material choice for wall panels, as demonstrated by Gschwendtner '981. Also, it would have been obvious to one having ordinary skill in the art at the time of the invention was made to have made Kneipp '872 wall panels 10 and 11 out of steel sheets, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design. In re Leshin, 125 USPQ 416.

In regards to claims 27, 28, 30, and 31, Kneipp '872 rise comprises plurality of support sub-modules 9. Each of said sub-modules comprises attachment means 14 for attaching the edges of plurality of wall panels 10/11 together (Figures 1 and 2). The panels are attached so that the entire lateral side of the rise is covered.

In regards to claims 14 and 29, Kneipp '872 discloses all elements per claimed invention as explained above. However, it is silent as to the specifics of the wall panels being welded to the support sub-modules.

Gschwendtner '981, as described above, teaches that welding is another means for attaching steel plates onto supporting structures.

It would have been obvious for a person with ordinary skill in the art, at the time the invention was made, to have welded Kneipp '872 wall plates onto the support sub-modules because it facilitates another way to attach the wall plates onto portions of the rise, as taught by Gschwendtner '981.

Response to Arguments

8. Applicant's arguments filed 01/28/2005 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to modify Gschwendtner to provide for a continuous unbroken exterior surface plate from a solid steel plate, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it is the teaching that screw connections could be replaced by welding means that provides the motivation of using solid plate having continuous unbroken surface.

Applicant argued that to provide steel sheet to Kneipp would defeat the benefits achieved by Kneipp because the modification would render Kneipp's invention unsatisfactory. This argument is not persuasive that any error in the determination

regarding the obviousness of the claimed subject matter has occurred. As long as some motivation or suggestion to combine the references is provided by the prior art taken as a whole, the law does not require that the references be combined for the reasons contemplated by the inventor. See In re Dillon, 919 F.2d 688, 693, 16 USPQ2d 1897, 1901 (Fed. Cir. 1990) (en banc), Cert. Deneid, 500 US 904 (1991) and In re Beattie, 974 F. 2d 1309, 1312, 24 USPQ2d 1040, 1042 (Fed. Cir. 1992).

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

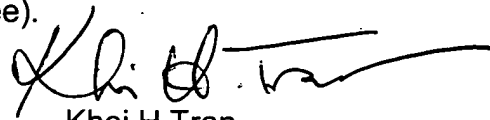
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoi H Tran whose telephone number is (703) 308-1113. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis can be reached on (703) 308-1113. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Khoi H. Tran', with a long horizontal flourish extending to the right.

Khoi H Tran
Primary Examiner
Art Unit 3651

KHT
02/5/2005